

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3864 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALABEN Y MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR MC BHATT with MS HEMALI H.DAVE for Petitioner
MR K.T. DAVE, AGP for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
Date of decision: 06/10/98

ORAL JUDGEMENT

The petitioner, who is the widow of late Shri Y.D.Mehta, seeks a direction on the respondents to treat her deceased husband Shri Yogesh D.Mehta in Group I of Schedule I of the Group Insurance Scheme, in view of the promotions which were given to him under the order dated 29th August, 1983, just a day after his demise, on the

basis of the directions issued by the High Court in Special Civil Application No. 3154/82, as per which, the Department was directed to consider the case of Shri Y.D.Mehta for promotion in the year 1977, disregarding the fact that there were certain allegations of irregularities against him, for which a Departmental enquiry was contemplated and further directing that if the respondents came to the conclusion that he was entitled to be promoted to the next higher post of Assistant Commissioner of Industries in year 1977, the Department will also fix his seniority in the higher post and that the Department will further consider whether having regard to the seniority position in the cadre of Assistant Commissioner of Industries, he would be entitled to further promotion, and if so, to grant him the deemed date of promotion with all benefits. It was ordered that these directions should be carried out within a period of four months from the date of the order i.e. 20.4.1983.

2. Pursuant to these directions, the Government made an order dated 29th August, 1983, which is referred to by both the sides, in which it was ordered as under:-

- (i) Shri Y.D.Mehta, should be promoted as Assistant Director of Industries with effect from 26.6.1977 and as Deputy Director of Industries with effect from 19.10.1979, when his nearest junior Shri Modi was promoted;
- (ii) The period for which Shri Y.D.Mehta had remained under suspension i.e. from 3.4.1979 to 15.8.1989 should be treated as duty;
- (iii) The post of Industry Officer held by Shri Mehta should be upgraded to that of Assistant Director (now Assistant Commissioner) from 26.6.1977 to 18.10.1979 and that of Deputy Director (now Dy.Commissioner) from 19.10.79 to 11.5.1982.

These orders were issued with the concurrence of the Financial Advisor and General Administration Department and the Industries Commissioner was directed to take steps to implement these orders.

3. According to the petitioner, Shri Y.D.Mehta thus, stood regularly promoted to a post falling in Group "A"

Entry I of the Group Insurance Scheme, since he came to be promoted as Deputy Commissioner of Industries in the grade of Rs. 900-1500 from 19.10.1979. Therefore, the insurance amount ought to have been paid to the heirs of the deceased under the Scheme on the footing that he was a Group "A" employee.

A representation which was made by the petitioner, however, came to be rejected by the respondent on 8.11.1983, by order at Annexure "B". As per that circular, the Government considering the question as to whether an employee can be the member of the higher group with retrospective effect in case he got promotion with retrospective effect and be eligible to get benefits of insurance of higher group in case of death, retirement etc., clarified that a change in group of an employee who may have got promotion with retrospective effect takes effect from the date of the next anniversary of the Scheme, following the date of the actual issue of the orders regarding the promotion of the employee. It was on the basis of this circular that order by the Industries Commissioner dated 8.1.1985 to grant insurance benefits to the petitioner, who is the widow of the late Officer, on the footing that her husband Shri Y.D.Mehta was holding the post of Industries Officer, came to be issued.

4. It was contended by the learned Counsel appearing for the petitioner that in view of the promotion of Shri Y.D.Mehta as Assistant Director of Industries with effect from 26.6.1977 and Deputy Director of Industries with effect from 19.10.1979, appropriate insurance should have been worked out on the basis that the said Officer was holding the post of Group "A", since the post of Deputy Director of Industries carried a pay-scale with a maximum of not less than Rs. 1300/- as mentioned in table I of the said Scheme under paragraph 24 thereof.

5. The learned Assistant Government Pleader on the other hand contended that in view of the clarification issued in the impugned circular dated 8.11.1983 at Annexure "B" to the petition and the provisions of paragraph 5.2 of the State Government Employees Group Insurance Scheme, 1981, the insurance was rightly worked out on the basis of Shri Y.D.Mehta holding the post of Industries Officer. It was contended that the promotion orders were issued on 29th August, 1983, a day after the passing away of Shri Mehta and the relevant date for shifting him in the higher group "A" as per paragraph 5.2 of the Scheme was the date of the next anniversary of the Scheme, which would have been 1st April, 1984. It was

submitted that the order of promotion dated 29th August, 1983 eventhough giving a retrospective effect to the promotion of the said employee, was required to be construed as an order of regular promotion only from the date of that order, while considering the operation of paragraph 5.2 of the Scheme. It was also contended that a higher premium was required to be paid when an employee was shifted to the higher group and since the premium amounts which were deducted from the salary of the said employee were at the rate applicable to the lower group, no benefits attached to the post falling in the higher group "A" could be given under the said Scheme.

6. The Government introduced the new State Government Employees Insurance Scheme under it's resolution dated 10.11.1981 and as provided by Section 4.1 of the Scheme, it was compulsory for all the employees who entered the Government service after the scheme was notified. The employees who were already in State Government service were given an option to opt out of the scheme and if the option was not exercised by 31st December, 1981, then they were deemed to become members of the scheme from the date it came into force. It will thus, be seen that the scheme was a compulsory scheme and the premium for insurance was payable as prescribed in the scheme itself.

Paragraph 5.2 of the scheme dealt with raising of the subscription when an employee came to be promoted, which had the effect of shifting him from one group to the other. This paragraph reads as under:-

"5.2 In the event of regular promotion of an employee from one Group to another, his subscription shall be raised, from the next anniversary, of the 'scheme' to the level appropriation to the Group to which he is promoted. Until the date of the next anniversary of the 'scheme' he shall continue to be covered for insurance for the same amount for which he was eligible before such promotion.

For example if the 'scheme' comes into force w.e.f 1st April, 1982, a Group D employee promoted on regular basis to Group C in May, 1982 shall continue to subscribe at the rate of Rs. 10 per month upto March, 1983 and be eligible for the insurance cover of Rs. 10,000 only in addition to the benefits from the Saving Fund appropriate to his subscription. From April, 1983, his subscription will be raised to Rs. 20

per month and he will become eligible for an insurance cover of Rs. 20,000 in addition to appropriate benefits from the Savings Fund."

Paragraph 11.4 of the Scheme lays down the manner in which the amount payable to the nominee or member of the scheme who dies while in service, was to be disbursed.

7. As noted above, by order dated 20th April, 1983 passed by Mr. Justice A.M. Ahmadi (as His Lordship then was), in Special Civil Application No. 3154/82, the promotions given to the said employee - Y.D. Mehta were to be given with all benefits. The insurance scheme is a beneficial scheme and being compulsory, it constituted a part of the service condition of the employee concerned. Deductions were admittedly to be made from the salaries which were paid to the employees, who were members of the scheme. Their falling in the group depended upon the pay-scale, which they carried and as per table - I, posts carrying pay-scale with a maximum of not less than 1300 fell in group "A", while the posts which were in the pay-scale of not less than Rs. 900, but less than Rs. 1300 were in group "B". Admittedly, the benefit of higher amounts payable in respect of the insurance on the footing that the deceased belonged to group "A" post, was denied to the petitioner and the insurance was worked out totally ignoring the order of his promotion on the footing that since the order was actually made on 29th August, 1983, it could not have operated earlier for the purpose of paragraph 5.2 of the scheme and that his shifting to the higher group could have taken place only from the next anniversary of the scheme, which would have been 1st April, 1984.

8. Paragraph 5.2 of the Scheme quoted above, does not speak of any order of promotion but it envisages the event of regular promotion of an employee from one group to another, in which event his subscription was to be raised from the next anniversary of the scheme to the level appropriate to the group to which he is promoted. Even though the order of promotion was issued on 29th August, 1983 in compliance with the orders of the High Court, the regular promotion of Shri Y.D. Mehta was given retrospectively as Assistant Director of Industries with effect from 26.5.1977 and as Deputy Director of Industries with effect from 19.10.1979 and the post which he was holding was up-graded accordingly as per the order of promotion with effect from those dates. These promotions which were given under the order dated 29th August, 1983 cannot be treated as regular promotions.

from the date of the order, in view of the specific dates of promotion given to Shri Y.D.Mehta in paragraph 3 of the said order, which has been reproduced above. Therefore, the date of regular promotion of Shri Y.D.Mehta as Deputy Director of Industries being from 19.10.1979, the next anniversary of the scheme to the level appropriate to the relevant Group "A", would be from 1.4.1980. Since all the consequential benefits of promotion were to be given pursuant to the orders of this High Court, this benefit of working out his placement in Group "A" of the Insurance Scheme on the basis of his regular promotion as Deputy Director of Industries from 19.10.1979 could never have been denied to Shri Y.D.Mehta. The so-called clarificatory circular Annexure "B", which has been challenged, is not at all warranted by the wordings of paragraph 5.2, which refers to the event of regular promotion and not to the order of promotion. The event of regular promotion in the case of Shri Y.D.Mehta has, in view of the orders of this High Court and the order of his promotion dated 29.8.1983 issued pursuant thereto, taken place on 19.10.1979, being the date on which he was regularly promoted as Deputy Director of Industries and the post held by him was upgraded. It was no fault on the part of Shri Y.D.Mehta if the amount suitable to the post falling in that group was not deducted, because, the event of his regular promotion from that earlier date became possible only when the injustice done to him was corrected by this High Court pursuant to which the orders of his promotion were issued. The deduction of the amount of premium was to be done depending upon the group in which the employee belonged and if any higher amount became deductible by virtue of any regular promotion having been given to him from 19.10.1979 as Deputy Director of Industries, that could easily have been worked out while determining the amount payable under the Scheme to the petitioner, who is widow of Shri Y.D.Mehta. In this view of the matter, the impugned circular at Annexure "B" purporting to clarify the scheme by stating that the change in group of an employee who may have got promotion with retrospective effect takes effect from the date of the next anniversary of the scheme following the date of the actual issue of the orders regarding promotion of the employee, is arbitrary, illegal and contrary to the scheme and is therefore, hereby set aside with a direction that the amount payable to the petitioner should be revised upwards on the footing that Shri Y.D.Mehta, the late husband of the petitioner, was regularly promoted as Assistant Director of Industries with effect from 26.6.1979 and as Deputy Director of Industries with effect from 19.10.1979. The impugned order at Annexure

"D" fixing the amount on the basis that he held the post of Industries Officer which was in the lower group, should be revised accordingly and the amount due should be paid to the petitioner by the respondent within two months from the date of the receipt of this order. Rule is made absolute with no order as to costs.

*/Mohandas